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Dr. MAX FOGIEL

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Highland Park, New Jersey 08904  
U.S.A.Telephone: (732) 214-8892  
Fax: (732) 214-0096FAX 5 PAGESFOR Examiner Randolph Reese  
Patent Technology Center 3600  
Phone: (703) 308-2121Mr. Reese, enclosed is the petition which we discussed  
last week. Thank you for your efforts in this matter.

Max Fogiel 1/31/05

Mr. Reese, in view of our phone conversation,  
I'm resending the petition with my  
signature, as required. Thanks again.

Max Fogiel 2/7/05

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FAX 5 PAGES

IN THE MATTER OF PATENT APPLICATION:

APPLICANT: ANTONIO JOSE DE ARAUJO PORTO

SERIAL NO.: 09/837,951

FILING DATE: April 19, 2001

ATTN: RANDOLPH  
REESE, TECHNOLOGY  
CENTRAL 3600EXAMINER: Trinh T. Nguyen  
ART UNIT: 3726FOR: METHOD OF MANUFACTURING PISTONS AND  
COMPONENTS THEREOF, AND FORGING TOOLSPETITION TO WITHDRAW HOLDING OF ABANDONMENT  
BASED ON FAILURE TO RECEIVE OFFICE ACTION

Hon. Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

SIR:

This is a petition under MPEP 711.03(c), II to withdraw abandonment of this application for failure to receive an Office Action for the following reasons:

1. An RCE application was filed on February 3, 2003 and a preliminary amendment was filed on March 27, 2003.

2. A Notice of Abandonment dated November 18, 2003 was thereafter received on the grounds of not responding to an Office Action of April 4, 2003.

3. A petition to withdraw the abandonment was then filed by fax to Examiner Randolph Reese on December 10, 2003.

4. In response to the petition, the application was then withdrawn from abandonment by PTO letter of June 1, 2004, which ordered that the Office Action be remailed with a new date for response.

5. While awaiting the receipt of this Office Action, applicant received instead another Notice of Abandonment for not replying to an Office Action of June 9, 2004. It is not possible to predict when the remailed Office Action may be received. Sometimes an Office Action would not be issued for a number of months in an application. For this reason it is not possible to predict when a response is due to an Office Action that has not been received.

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6. Applicant believes that the Office Action was not remailed due to error.

7. As noted in the previous earlier petition, applicant's representative has practiced for over 30 years and during all this time, an Office Action was never lost. In this situation not only was an Office Action not received the first time, but then it was also not received a second time, for the same case, after this Office Action was allegedly remailed.

8. The Notice of Abandonment of January 11, 2005 has an error which is important in this matter. This Notice of Abandonment mentions that applicant's reply was received on June 9, 2004. However, no such reply was filed by applicant. Furthermore, it is unusual also, for an Examiner to receive a reply from an applicant, prepare a response to that reply, and have that response mailed from PTO, all on the same day.

9. A copy of the file card listing the actions received from PTO and replies filed is being submitted.

10. Also, the Notice of Abandonment of January 11, 2005 mentions that a proper reply to a final rejection is the filing of an RCE, among other alternatives. But an RCE was filed on February 3, 2003, and since then a final rejection has not been in effect.

11. Applicant's representative spoke to Examiner Randolph Reese who pointed out that the change of address of the undersigned was not received before the Office Action was to have been remailed. However, the change of address notice should not have any bearing on the issue of having not received the Office Action a second time. To avoid loss of mail and complications with the Post Office which will forward mail for only one year, applicant's mail is received at his old location as well as his new location. The mail received at the old location is left for the undersigned with the receptionist of the firm occupying the building at the old address. This building at the old address, incidentally, is owned by the undersigned who

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picks up the mail from the receptionist almost daily. A very significant amount of mail is still received from PTO at the old address, almost daily, even though the change of address notice has been sent to PTO for each case.

12. The Office Action that was not received the first time was found not to have been delivered and returned to PTO. Applicant's representative does not know the reason as to why it was not delivered. Perhaps a close examination of the address should be made to where the Office Action was mailed. If the address is incomplete or not fully correct, it may be the cause for the non-delivery. In speaking to Examiner Randolph Reese on January 27, 2005 after he received the case, it was not known at that time why the Office Action was not received a second time, as well as the first time. Applicant notes, incidentally, that the Office Letter of June 1, 2004 from Randolph Reese was received at the old address.

In view thereof, it is respectfully requested that the application be reinstated from abandonment, on ground that the remailed Office Action was not received.

Respectfully submitted,

*Max Fogiel 2/4/05*  
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44 Maple Court  
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Phone: (732) 214-8892

THYSSEN  
CLIENTARAMJO PORTO  
INVENTOR837,951  
SERIAL NO.

FROM PATENT OFFICE		TO PATENT OFFICE		
Action Received	Date Action Is Due from PTO	Type of Response	Date Mailed	Date Filed (from card)
				DATE DUE
		Filed New Patent Application		4/19/01
Restriction		Election		4-31-02
Req.		Amend		9-5-02
FR		Amend . Call Examiner		8-14-03
		Filed CPA 2-3-03		
Abandonment Notice	dated 11-18-03			
		Petition to Withdraw Abandonment	12-10-03	
PTO Letter granting Petition	dated 6-1-04			
Abandonment Notice	dated 1-11-05			
		Petition to Withdraw 2nd Abandonments	1-31-05	